

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

RECEIVED

MAY 27 1992

RCOM SECTION

IN THE MATTER OF:

Knapheide Manufacturing Co.
West Quincy, Missouri;

Respondent.

Proceedings under Section
3008 of the Resource
Conservation and Recovery Act
of 1976, as amended, 42 U.S.C.
Sections 6901 et.seq.

Docket No. VII-92-H-0008

Consent Agreement and
Consent Order

A. PRELIMINARY STATEMENT

1. This Proceeding was initiated pursuant to Section 3008 (a) and (g) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6928(a) and (g). The Complainant, the Regional Administrator of the United States Environmental Protection Agency (EPA), Region VII, issued a Complaint, Compliance Order⁴ and Notice of Opportunity for Hearing ("Complaint") to Respondent, Knapheide Manufacturing Company, Inc., on or about February 4, 1992, proposing penalties for violations of Section 3005 of RCRA, 42 U.S.C. § 6925.

2. Authority to execute this Consent Agreement and Consent Order ("Order") has been delegated to the Director, Waste Management Division, by EPA Delegation No. R7-8-9-A, dated May 16, 1988.



R00036128

RCRA Records Center

II. CONSENT AGREEMENT

3. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this or in any later proceeding to enforce the terms of this Order.

4. Respondent admits the factual allegations set forth in the Complaint and agrees not to contest said allegations in any proceeding to enforce the terms of the Order set forth herein.

5. Respondent explicitly waives the right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.

6. Respondent consents to the issuance of the Order herein recited and agrees to comply with the terms of the Order as set forth below.

7. Respondent and EPA each agree to bear their own costs and attorneys fees.

III. CONSENT ORDER

A. PENALTY

8. IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), IT IS ORDERED that Knapheide Manufacturing Company, Inc. pay a civil penalty of ___, __ Dollars, (\$___, __.00). Of the said penalty \$ [economic benefit component] shall be paid within thirty (30) calendar days following receipt by Respondent of a fully executed copy of this Order. The remainder of the civil penalty (\$___, __.00), shall become payable thirty (30) calendar days following receipt by Respondent of a fully executed copy of this Order, and shall accrue interest as provided below, and shall be paid no later than four (4) years following receipt of a fully executed copy of

this Order; however, Respondent may offset this remainder of the penalty amount, and any accrual thereon, on a 2:3 ratio, i.e., for every dollar expended, 2/3 dollar shall be offset against such penalty. Said offset of the penalty amount shall be made in accordance with paragraphs ____ and ____, below. Payment of said penalty amounts shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251, and shall identify the Respondent by name and docket number. A copy of the transmittal letter and check shall be mailed to EPA, and directed to Robert W. Richards, Assistant Regional Counsel, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Should the entire civil penalty not be paid within the time provided above, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently 6.00 percent per annum for the period January 1, 1992 through December 31, 1992) on the unpaid balance until such civil penalty and accrued interest are both paid in full. A late payment handling charge of \$15.00 will be imposed for payments received thirty (30) calendar days after the due date, and an additional \$15.00 will be charged for each subsequent thirty (30) days period. As provided by 31 U.S.C. § 3717(e) (2), a 6.00 percent per annum penalty (late charge) will be assessed on any principal amount not paid within ninety (90) days of the due date.

B. COMPLIANCE ACTIONS

9. IT IS FURTHER AGREED BY THE PARTIES, and pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), IT IS ORDERED that Respondent shall take the following compliance actions within the time periods specified:

a. Within sixty (60) calendar days of receipt of this Compliance Order, Respondent shall submit to EPA and MDNR, for review and approval by EPA and MDNR, a closure plan for the waste paint filters and overspray filters storage unit and

incinerator unit ("hazardous waste units"). Such closure plan shall meet the requirements found at 40 C.F.R. Part 265, Subparts G and O. If EPA and MDNR find that the closure plan is deficient or must be modified, Respondent shall correct such deficiencies in the closure plan or modify the closure plan and shall resubmit the closure plan to EPA and MDNR, all in accordance with 40 C.F.R. Part 265, Subparts G and O. EPA reserves its right to unilaterally modify the closure plan in accordance with 40 C.F.R. Part 265, Subparts G and O.

b. Upon EPA and MDNR approval, Respondent shall proceed to fully implement the approved closure plan for the hazardous waste units in accordance with the schedule contained therein. The approved closure plan, inclusive of any modifications, shall be incorporated into and become a part of this Compliance Order.

c. At least thirty (30) calendar days prior to conducting any sampling activities pursuant to the approved closure plan, Respondent shall provide EPA and MDNR with written notice of the dates on which such sampling activities are to occur.

d. Within forty-five (45) calendar days of receipt of this Compliance Order, Respondent shall establish and thereafter maintain financial assurance for closure of the hazardous waste units in accordance with 40 C.F.R. § 265.143.

e. Within five (5) calendar days of establishment of financial assurance for closure of the hazardous waste units, Respondent shall submit evidence to EPA and MDNR that financial assurance for closure of the hazardous waste units, as required by 40 C.F.R. § 265.143, has been established.

h. Within forty-five (45) calendar days of receipt of this Complaint, Respondent shall establish and maintain liability coverage for sudden accidental occurrences as required by 40 C.F.R. § 264.147(a).

i. Within five (5) calendar days of establishment of coverage for sudden accidental occurrences, as required by 40 C.F.R. § 264.147(a), Respondent shall submit evidence to EPA and MDNR that such coverage has been obtained.

j. Within sixty (60) calendar days of completion of closure of the hazardous waste units, Respondent shall submit a certification of closure to EPA and MDNR, as required by 40 C.F.R. § 265.115.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

10. Within sixty (60) calendar days of receipt of this Consent Order, Respondent shall submit to EPA an Environmental Audit Plan for the facility that is the subject of the Complaint and for other facilities of the Respondent located at West Quincy, Mo., Quincy, Il., and Jefferson City, Mo. The Environmental Audit Plan shall comply with the terms of the

Consent Agreement, the RCRA Penalty Policy, the NEIC guidance, and EPA's February 12, 1991 "Policy on the Use of Supplemental Enforcement Projects in EPA Settlement Agreements," as well as any other relevant guidance. The Plan shall identify Respondent's project officer, provide a cost estimate/budget for the audit, and a schedule for the performance of the environmental audit. The Plan shall specify procedures that will be used to gather the following information from the facilities:

- (1) identification of waste streams
- (2) identification of emissions and releases to all environmental media
- (3) identification of all federal state and local permits/authorizations relating to the facilities.
- (4) identification of where any facility is not in compliance with federal state or local environmental requirements
- (5) review of the impact of the facilities on the environment, including identification of SWMUs and any releases from the facility, independent of their regulatory status.

11. Upon EPA approval of the Environmental Audit Plan, Respondent shall conduct an environmental audit of the subject facilities by fully implementing the approved Plan in accordance with the schedule set forth therein. The approved Plan, inclusive of any modifications, shall be incorporated into and become a part of this Consent Order.

12. Within sixty (60) calendar days after implementation of the Environmental Audit Plan, Respondent shall submit to EPA

an Environmental Audit Report including all information gathered pursuant to the environmental audit conduct therein. The Environmental Audit Report shall consist of two main sections. The first section shall indicate all incidents wherein the subject facilities are not in compliance with federal or state environmental statutes and regulations, what the Respondent intends to undertake to come into compliance, and a schedule for those statutory and regulatory compliance activities. The second section shall identify all supplemental environmental projects which the Respondent may choose to undertake in mitigation of the penalty in this Consent Agreement and Consent Order. These projects may include pollution prevention projects, pollution reduction projects, projects remediating adverse public health or environmental consequences, and enforcement-related environmental public awareness projects, consistent with EPA's February 12, 1991 "Policy on the Use of Supplemental Enforcement Projects in EPA Settlement Agreements." The second section shall propose specific projects that Respondent intends to implement and provide the justification for those projects.

13. Upon EPA approval, with modifications, of the Environmental Audit Report, EPA will notify Respondent of the proposed supplemental environmental projects in the Report which Respondent may perform in mitigation of penalties under this Consent Agreement and Consent Order. Respondent may then select from those approved projects those projects which it intends to implement, and shall submit detailed proposals for each such selected project. The detailed proposals shall include a project officer, implementation schedule and a cost estimate/budget for

the project. EPA will then review and approve, with modifications, the detailed proposals.

14. Within thirty (30) calendar days of EPA approval, with modifications, of the detailed proposals, Respondent shall submit to EPA a Schedule for Supplemental Environmental Projects, containing a list of and implementation schedule for all projects it then intends to implement. Within thirty (30) calendar days of EPA approval of the Schedule, Respondent shall implement such approved supplemental environmental projects in accordance with the approved detailed proposals and schedule, as a binding obligation of this Consent Agreement and Consent Order.

15. Respondent shall submit to EPA monthly progress reports summarizing its activities to comply with Section B and C of this Consent Order. Additionally, these reports shall include expenses actually incurred pursuant to Section B which may qualify to offset that portion of the penalty subject to offset. Qualifying expenses shall be consistent with the cost estimate/budget in the EPA approved Environmental Audit Plan and in each EPA-approved detailed proposal for supplemental environmental projects.

16. Complainant and Respondent agree that as of June __, 1992, Respondent has incurred \$ __, __.00 in expenses which qualify as environmental audit and/or supplemental environmental projects for offset against the penalty amount. Any other expenses prior to that date do not qualify for offset against that portion of the penalty subject to offset. For expenses subsequent to June __, 1992, EPA shall review the monthly progress reports submitted by Respondent and shall approve, with

modifications, those expenses which qualify for offset against that portion of the penalty amount subject to offset. Such expenses incurred later than four (4) years after the effective date of this Consent Order shall not qualify for offset.

IV. NOTIFICATIONS AND SUBMITTALS

17. All notices, whether oral or written, and all written documents required by and submitted to EPA pursuant to this Order shall be directed to:

Ruben McCullers
Environmental Scientist
U.S. EPA, Region VII
WSTM/RCRA/RCOM
726 Minnesota Ave.
Kansas City, Kansas 66101

V. MODIFICATIONS

18. Any modifications to this Order shall be in writing and shall be made by mutual agreement of the parties. Such modifications or supplements to this Order shall become effective when signed by both parties, and upon execution by both parties, shall be incorporated into and become part of this Order.

VI. STIPULATED PENALTIES

19. Unless there has been a written modification of a compliance date by EPA, in the event Respondent fails to comply with any requirement specified below, Respondent shall pay stipulated penalties as set forth below. For purposes of this Section, compliance by Respondent shall include completion of the activities set forth in the Order and submittal of all necessary reports in a timely and satisfactory manner consistent with the requirements of this Order:

a. For failure to submit written commitments and progress reports identified in Sections B and C of this Consent Order:

1. For days 1-14, \$250.00 per day;
2. For days 15-30, \$500.00 per day; and,
3. For days 31 and thereafter, \$1500.00 per day.

b. For failure to obtain compliance with the commitments as agreed in Sections B and C of this Consent Order:

1. For days 1-14, \$1,000.00 per day;
2. For days 15-30, \$2,500.00 per day; and,
3. For days 31 and thereafter, \$5,000.00 per day.

20. All penalties shall begin to accrue on the first work day after complete performance is due or a violation occurs, and shall continue to accrue through the final day or correction of the noncompliance, excluding weekends and national holidays. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

21. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification will describe the violation and will indicate the amount of penalties due.

22. Nothing in this Section shall alter in any way Respondent's obligation to complete performance required hereunder. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason Respondent's failure to comply with any requirements of this Order, including the right

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of EPA to petition the Court to order compliance with the terms
of this Order.

VII. PARTIES BOUND

23. This Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

VIII. ACCESS

24. EPA and its authorized representatives shall have access to Respondent's facility at all times to monitor Respondent's implementation of and compliance with the terms of the Order.

IX. RESERVATION OF RIGHTS

25. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(a) of RCRA, 42 U.S.C. 6928. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States.

26. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with RCRA or any other applicable local, state or federal laws and

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regulations, including any local, state or federal permitting
obligations.

X. EFFECTIVE DATE

27. This Order shall be effective upon receipt by
Respondent of a fully executed copy. All time periods herein
shall be calculated from the date of Respondent's receipt of the
same unless otherwise provided in the Order.

28. This Order shall remain in full force and effect until
such time as all obligations required of Respondent herein have
been completed to EPA's satisfaction.

Date

Knapheide Manufacturing
Company, Inc.

Date

Robert W. Richards
Assistant Regional Counsel
U.S. EPA Region VII

Date

David A. Wagoner, Director
Waste Management Division
U.S. EPA Region VII